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APPENDIX C

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

AUG 6 1990

MEMORANDUM NO. 153

TO: All Government Contracting Agencies of the
Federal Government and the District of Columbia

FROM: *Samuel D. Walker*
SAMUEL D. WALKER
Acting Administrator

SUBJECT: Application of the Davis-Bacon Act to Contracts
for Asbestos and/or Paint Removal

This memorandum clarifies the application of Government contract labor standards coverage to contracts calling for asbestos or paint removal from public buildings or public works and structural components thereof. We have learned that some contracting agencies are incorporating the Davis-Bacon Act (DBA) requirements in these contracts while others are including the McNamara-O'Hara Service Contract Act (SCA) requirements. To ensure greater consistency, we are providing unitary guidance on the subject.

The DBA applies to Federally-financed contracts in excess of \$2,000 for the construction, alteration, and/or repair, including painting and decorating, of a public building or a public work. The SCA applies to Government contracts, the principal purpose of which is the furnishing of services through the use of service employees.

We have determined, after substantial review, that removal of asbestos or paint from public buildings or public works constitutes building alteration within the statutory language of DBA because asbestos or paint removal clearly alters those buildings or works, regardless of whether subsequent reinsulating or repainting is being considered. This view is consistent with previous determinations that contracts for sandblasting or hydrostatic cleaning of public buildings are subject to DBA.

Accordingly, any Federal or District of Columbia contract in excess of \$2,000 that calls for asbestos or paint removal is subject to DBA and must include its stipulations and the applicable wage decision.

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The Brooks Act originally did not include a definition of ADP equipment. However, Congress has amended that Act to include a functional definition of ADP equipment (Public Law 99-591, Title VIII, Section 822; P.R. Rep. No. 99-1005, 99th Cong., 2d Sess. 776). The definition provides an operationally effective way of evaluating when ADP equipment is to be acquired, used, or managed in accordance with the Federal Property and Administrative Services Act. The new definition reflects Congress' explicit recognition of the merging of ADP and telecommunications technologies. See 40 U.S.C. 759(a)(2).

In determining the applicability of the SCA exemption set forth in 29 CFR 4.123(e), contracting officers should follow the Brooks Act definition of ADP equipment set forth in 40 U.S.C. 759(a)(2), and implementing regulations of the General Services Administration, 41 CFR 201-2. This will provide the procurement community with a more consistent and easily understood approach to applying the SCA exemption.

Accordingly, contracts which are principally for the maintenance, calibration and/or repair of ADP equipment as that term is defined by the Brooks Act are exempt from the SCA, provided that the requirements for exemption set forth in 29 CFR 4.123(e) (1)(ii) (A) through (D) are met. The contracting officer initially must make an affirmative determination that all of the conditions of the exemption have been satisfied prior to contract award. If, after contract award, it is later determined that the exemption does not apply, corrective procedures are provided in 29 CFR 4.5(c)(2) for inserting the required contract clauses and applicable wage determinations into the contract.

Contracts entered into before the date of this memorandum which contain SCA provisions will continue to be subject to SCA for the duration of the contract, and the Wage and Hour Division will enforce SCA on such contracts. However, note that, in applying this policy, pursuant to 29 CFR 4.143 - 4.145, multi-year contracts are considered new contracts under SCA on the annual or biennial anniversary date of the contract. In addition, contract options or extensions are also considered new contracts for purposes of SCA.